IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.199 of 2004

Commissioner of Income-tax,
Madurai. ..Appellant

Vs

M/s.Coats Viyella India Ltd.,
Madurai. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. No.1988(Mds)/1995 dated 30.05.2003 for the assessment year 1987-88 against the order of the Commissioner of Income Tax Appeal in ITA.No.136/95-96 dated 12.07.1995 against the order of the Deputy Commissioner of Income-Tax Special Range-II, Madurai dated 30.03.1995 in PAN/G.I.R.No.47-042-CX-9206 for the Assesment year 1987-88.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department
For Respondent : Mr.Annamalai

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. No.1988(Mds)/1995 dated 30.05.2003 On 15.06.2004, this Court admitted the appeal and formulated the following substantial question of law.

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that a general reserve for the purpose of business would satisfy the condition of creation of reserve under Section 80 HHC?"

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2. The facts leading to the above substantial question of law are as under:

The assessee is a company in which the public are substantially interested. The relevant assessment year is 1987-88 and the corresponding accounting year ended on 30.06.1986. The original assessment was completed on 30.03.1990 on a total income of Rs.6,02,09,830/-. Later it was noticed that deduction under Section 80HHC of the Income-tax Act ("Act" in short) of Rs.4,70,925/- allowed in the assessment was not in order since the assessee had not created necessary reserve as required under the proviso to Section 80HHC, as a result of which income chargeable to tax has escaped assessment to the extent of Rs.4,70,925/-. Hence notice under Section 148 of the Act was issued on 03.07.1992. Later, the assessment was completed on a total income of Rs.5,57,05,180/-. While completing the assessment, the Assessing Officer held that the assessee is not entitled to deduction under Section 80HHC of the Act on the ground that the assessee had not complied the requirement as contemplated under Section 80HHC of the Act. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of assessment. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal and held that the assessee is entitled to relief under Section 80HHC of the Act. Aggrieved by the order, the Revenue has preferred to file the present tax case.

3. The issue involved in this case stands concluded in favour of the assessee by this Court judgment reported in 252 ITR 895 in the case of Commissioner of Income-tax Vs. Sri Jayajothi and Co. (P.) Ltd., wherein it was held as follows:-

> "We do not find any substance in the Revenue's contention that in order to claim the benefit under section 80HHC of the Income-tax Act, the deduction claimed under the section should have been credited to special reserve account created specially for that purpose. The Revenue is reading into the provision more than what is contained therein. We must deprecate this approach on the part of the Revenue. The plain language of the provision makes it abundantly clear that the credit is to be made "to a reserve account to be utilised for the purposes of business of the assessee". That the credit, in fact, had been made to a reserve is not in dispute. That the reserve to which credit is made is used for the business of the assessee, is also not in dispute. The claim made by the assessee was, therefore, within the four corners of the law and should have been allowed. The assessee has been needlessly dragged from one forum to another by reason of this wholly unjustified approach on the part of the Revenue."

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4. Following the above, we answer the above question in favour of the assessee and against the Revenue. Accordingly, the tax case is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Commissioner of Income Tax,
Madurai.

2. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

3. The Deputy Commissioner of Income-Tax,
Special Range - II,
Madurai - 625002.

4. The Commissioner of Income-Tax (Appeals) -I,
Madurai.

1 cc To Mr.Pushya Sitaraman, Advocate, SR.27407.

T.C.(A) No.199 of 2004

LA(CO)
RVL 10.05.2007

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